

United States District Court

for the
Western District of New York

United States of America

v.

Case No. 20-mj-

10

PAUL E. LUBIENECKI

Defendant



CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

From on or about August, 20, 2019, to on or about February 4, 20²⁰, in the Western District of New York, the defendant, PAUL E. LUBIENECKI, with the intent to harass and intimidate another person, that is Victim, used a facility of interstate and foreign commerce to engage in a course of conduct that placed Victim in reasonable fear of death and serious bodily injury to Victim, and caused attempted to cause, and would be reasonably expected to cause substantial emotional distress to Victim;

all in violation of Title 18, United States Code, Section 2261A(2)(A) and 2261A(2)(B).

This Criminal Complaint is based on these facts:

☒ Continued on the attached sheet.

Complainant's signature

Randall E. Garver, Special Agent, FBI

Printed name and title

Sworn to before me and signed in my presence.

Date: February 11, 2020

City and State: Buffalo, New York

Judge's signature

HON. H. KENNETH SCHROEDER, JR., USMJ

Printed name and title

AFFIDAVIT IN SUPPORT OF A CRIMINAL COMPLAINT

I, Randall E. Garver, being duly sworn, depose and say:

1. I am a Special Agent of the Federal Bureau of Investigation and entered on duty in May 2006. I am currently assigned to the Buffalo Field Office and work on cases associated with the Violent Crimes Against Children program, which targets individuals involved in the online sexual exploitation of children. As part of these duties, I have become involved in an investigation focused on instances of sexual abuse by clergy members with the Catholic Diocese of Buffalo.

2. I make this affidavit in support of a criminal complaint charging **PAUL E. LUBIENECKI** ("LUBIENECKI"), with cyberstalking, in violation of Title 18, United States Code, Section 2261A(2)(A) and (B).

3. The statements contained in this affidavit are based on my involvement in this investigation, as well as information provided to me by other law enforcement officers in this investigation, and upon my training and experience as a Special Agent of the Buffalo FBI. Because this affidavit is being submitted for the limited purpose of seeking a criminal complaint, I have not included each and every fact known to me concerning this investigation. I have set forth only the facts necessary to establish probable cause to believe that LUBIENECKI knowingly violated Title 18, United States Code, Sections 2261A(2)(A) and (B).

4. On or about February 4, 2020, I learned that a member of the local media in Buffalo, New York (hereinafter "Victim"), received a voicemail that contained a death threat. Victim had, for the approximately the past two years, reported on the Catholic Diocese of Buffalo ("Diocese") clergy sex abuse scandal, and on February 4, 2020, reported that the Christ the King Seminary was being closed by the Diocese.

5. Upon learning this information, I called Victim, who told me that around 5:00 p.m. on February 4, 2020, Victim received an incoming call from a number marked "unknown". The voice mail ended by naming the village in which Victim resided in and telling Victim he will kill him. Victim subsequently provided me with the voice mail from February 4, 2020, which was 12 seconds in duration. During the voice mail, the caller criticized Victim's professionalism before stating, "...I know where you live in [TOWN]. I'm going to find you. I'm going to kill you." Victim relayed that other harassing communications had been received from an "unknown" number in August, November, and December 2019.

6. On February 5, 2020, a subpoena was issued to Verizon Wireless that requested subscriber and toll records for Victim's phone number. The purpose of the subpoena was to identify the "unknown" phone number that was used to make the threat. On the same date, officials at Verizon Wireless provided the requested records. That evening, I again called Victim to obtain the exact time the threatening voice mail was left and learned it was 5:07 p.m. Based on my review of Victim's Verizon toll records, the threatening call came from

(716) 207-XXXX. The Verizon records showed an outgoing call to Victim's phone that went to voice mail at 5:07 pm.

7. On February 6, 2020, I learned that the telephone number (716) 207-XXXX belonged to T-Mobile, and on that date, a subpoena was issued to T-Mobile that requested subscriber and toll records for telephone number (716) 207-XXXX. The same day, I spoke to an official at T-Mobile who told me she would provide tolls records as soon as possible. However, she also shared that (716) 207-XXX was a pre-paid TracFone, and, as such, T-Mobile did not have any subscriber records in their holdings for the number.

8. On February 7, 2020, a subpoena was issued to TracFone that requested subscriber and toll records for (716) 207-XXXX for the time period of August 1, 2019, to February 7, 2020. The same day, TracFone provided the FBI with the requested records. The subscriber records were limited but included a date of birth that matches LUBIENECKI's, a zip code of the town where LUBIENECKI resides, and a specific AOL email address linked to the account, pel[XXX]@aol.com. FBI Staff Operations Specialist Kimberly Smith searched for and found research papers online that were authored by LUBIENECKI and included pel[XXX]@aol.com in his contact information. Smith then used a subscription based search database to identify phone number (716) 649-XXXX as LUBIENECKI's possible home phone number. The toll records show 23 contacts between (716) 207-XXXX and (716) 649-XXXX with the first being August 5, 2019, and the most recent being January 29, 2020. Additionally, toll records show 20 contacts between (716)

207-XXXX and (716) 655-XXXX which is believed to be the work telephone number for LUBIENECKI's wife.

9. During my communications with Victim, Victim told me that Victim also received harassing voice mails in the past, including on August 20, 2019, August 26, 2019, November 15, 2019, and December 4, 2019. From my review of the toll records associated with (716) 207-XXXX, I found 11 total outgoing phone calls from (716) 207-XXXX made to Victim's phone, including on the aforementioned dates. For the voicemail received on August 20, 20, 2019, the caller stated, among other things, "... nice going, asshole, you're a real fraudulent reporter." It should be noted that on August 20, 2019, Victim reported on allegations by a former seminarian that the Diocese suppresses the truth in relation to sexual abuse. For the voicemail received on August 26, 2019, the caller stated, among other things, "... are you going to report on that, or are you just one of these asshole journalists cause you think you'll get a Pulitzer for doing crap, ... false reporting, I hope the FBI comes after you too." For the voicemail received on November 15, 2019, the caller stated, among other things, "So Malone is still Bishop ... and you're still a bad Catholic and a horrible reporter. You ought to get a job at Wal-Mart, that's about the best you'll do. I hope to God I don't see you walking around [TOWN]." It should be noted on November 15, 2019, Victim reported on a report that the resignation of the Bishop of the Diocese was imminent. For the voicemail received on December 4, 2019, the caller stated, among other things, "Oh, you must be so happy. You destroyed the Diocese of Buffalo and Bishop Malone. Oh, you must be so proud. You're a piece of shit, you really are a piece of shit. You're not a journalist ... and you don't

know how to be a journalist. And the way you keep playing on these ex-seminarians who are assholes. You're one of the biggest assholes going. You must be so proud of how you destroyed everything. I'm gonna destroy your career.” It should be noted that on December 4, 2019, Victim reported on the resignation of the Bishop of the Diocese. From my review of the toll records, I know that each of these calls originated from telephone number (716) 207-XXXX.

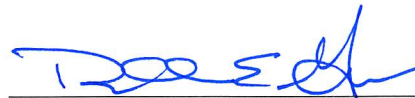
10. Victim has advised me that based on the multiple voicemail messages he has received, he is in fear for his life and has suffered substantial emotional distress.

11. On February 10, 2020, I listened to a publically available speech given by LUBIENECKI on September 22, 2017, about John Timon, the first Bishop of Buffalo. Based on my review of that speech, I believe that the individual who left Victim the voicemail messages referenced above is LUBIENECKI.

12. During my communications with Victim, Victim also advised that two other individuals (hereinafter “Witness 1” and “Witness 2”) also received harassing voicemails from an unknown number. Witness 1 and Witness 2 shared their phone numbers and the voicemails they received with Victim, who then shared them with me. It should be noted that I have previously had contact with Witness 1 and Witness 2, and was aware of their phone numbers. With respect to Witness 1, on December 4, 2019, Witness 1 received a voicemail message in which the caller stated, among other things, “... you destroyed a good bishop, a

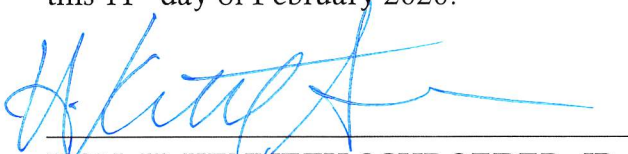
good man. You must be so proud of being such an asshole. Leave the priesthood or we'll get you." With respect to Witness 2, on December 4, 2019, Witness 2 received a voicemail message in which the caller stated, among other things, "... you must be so proud. You got rid of a good man. I love the bishop and now you got rid of him ... such an asshole. I hope you burn in hell." Analysis of the toll records show that both harassing voicemails originated from telephone number (716) 207-XXXX, and were placed a 2:52 p.m. and 2:51 p.m., respectively.

13. Based upon the foregoing, I respectfully submit that I have probable cause to believe that **PAUL E. LUBIENECKI** has violated Title 18, United States Code, Section 2261A(2)(A) and (B).



Randall E. Garver, Special Agent
Federal Bureau of Investigation

Sworn and subscribed to before me
this 11th day of February 2020.



HON. H. KENNETH SCHROEDER, JR.
United States Magistrate Judge